



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2017-0413; FRL-9975-88-Region 3]

**Approval and Promulgation of Air Quality Implementation Plans;
West Virginia; 2015 Ozone National Ambient Air Quality Standards**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving revisions to the State of West Virginia state implementation plan (SIP). The revisions update the effective date by which the West Virginia regulations incorporate by reference the national ambient air quality standards (NAAQS), additional monitoring methods, and additional equivalent monitoring methods. This update will effectively add the following to the West Virginia SIP: The 2015 ozone NAAQS, monitoring reference and equivalent methods pertaining to fine particulate matter (PM_{2.5}), Carbon Monoxide (CO), and coarse particulate matter (PM₁₀), and it will revise the ozone monitoring season, the Federal Reference Method (FRM), the Federal Equivalent Method (FEM), and the Photochemical Assessment Monitoring Stations (PAMS) network. The SIP revision will also change a reference from the “West Virginia Department of Environmental Protection,” to the “Division of Air Quality.” EPA is approving these revisions in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-

R03-OAR-2017-0413. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <http://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Joseph Schulingkamp, (215) 814-2021, or by e-mail at schulingkamp.joseph@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On June 13, 2017, the State of West Virginia through the West Virginia Department of Environmental Protection (WVDEP) submitted a formal revision to West Virginia's SIP pertaining to amendments of Legislative Rule, 45 CSR 8 – Ambient Air Quality Standards. The SIP revision consists of revising the effective date of the incorporation by reference of 40 CFR parts 50 and 53.

II. Summary of SIP Revision and EPA Analysis

West Virginia has submitted this SIP revision to update the State's incorporation by reference of 40 CFR part 50, which contains the Federal NAAQS, and 40 CFR part 53, which contains the ambient air monitoring reference methods and equivalent reference methods. Currently, the version of 45 CSR 8 in the West Virginia SIP incorporates by reference 40 CFR parts 50 and 53 as effective on June 1, 2013; this SIP revision will update the effective date to June 1, 2016.

In the June 13, 2017 SIP submittal, WVDEP submitted amendments to the legislative rule which include the following changes: To section 45-8-1 (General), the filing and effective dates are changed to reflect the update of the legislative rule; to section 45-8-3 (Adoption of Standards), the effective dates for the incorporation by reference of 40 CFR part 50 and part 53 are changed; to section 45-8-4 (Inconsistency Between Rules), the reference to the “West Virginia Department of Environmental Protection,” is changed to the “Division of Air Quality.” West Virginia has amended 45 CSR 8 to revise the filing and effective dates of the rule to May 15, 2017 and June 1, 2017 respectively. The effective date of the incorporation by reference of 40 CFR parts 50 and 53 changed from June 1, 2013 to June 1, 2017. EPA finds the revised version of 45 CSR 8 with new effective dates incorporating by reference 40 CFR part 50 and part 53, as well as the changes to the reference of the state air agency, are in accordance with requirements in section 110 of the CAA.¹

This update will effectively add the following to the West Virginia SIP: The 2015 ozone NAAQS, monitoring reference and equivalent methods pertaining to PM_{2.5}, CO, and PM₁₀, and it will revise the ozone monitoring season to March 1st through October 31st, the FRM, the FEM, and the PAMS network.

On October 16, 2017 (82 FR 47981 and 82 FR48033), EPA simultaneously published a notice of proposed rulemaking (NPR) and a direct final rule (DFR) for the State of West Virginia approving the SIP revision. EPA received five comments on the rulemaking and withdrew the

¹ This action, which approves West Virginia’s rules incorporating by reference the NAAQS as of a certain date, is not affected by the recent decision in *South Coast Air Quality Mgmt. Dist. v. EPA*, No. 15-1115 (D.C. Cir. Feb. 16, 2018).

DFR prior to the effective date of December 15, 2017.

III. Response to Comments

During the comment period, EPA received several anonymous comments on EPA's rulemaking. EPA is responding to comments submitted on the proposed revision to the West Virginia SIP specific to this action. All other comments received were either supportive of or not specific to this action and thus are not addressed here.

Comment #1: The commenter expressed a desire for EPA to, “[s]uspend or rescind the [past] admin rule.” The commenter then continued with statements not specific to this action by copying sections from EPA's “Policy Assessment for the Review of the Primary National Ambient Air Quality Standard for Sulfur Oxides, External Review Draft” (August 2017, EPA-452/P-17-003) (Draft PA) without providing any specific argument.

Response #1: The comment lacks any specifics regarding what action EPA should take regarding our proposal to incorporate by reference for the West Virginia SIP 45 CSR 8 which incorporates all NAAQS. Based on the context of the comment, it appears the comment is requesting that EPA suspend or rescind the 2010 Sulfur Dioxide (SO₂) NAAQS due to a lack of available information.

EPA is not in this action revising any SO₂ NAAQS nor any NAAQS and as such the references to the Draft PA are irrelevant. In this action, EPA is approving, in accordance with CAA section 110, West Virginia's request to incorporate by reference NAAQS EPA has previously promulgated in separate unrelated rulemakings. As the comment regarding suspending or rescinding prior “admin” rules such as the NAAQS is not germane to this rulemaking, EPA

provides no further response.

Comment #2: A second comment stated that EPA should not add the 2015 ozone standard to any state's SIP as the Administrator has publicly stated the he intends to repeal the ozone standard. The commenter believes that his announcement can be interpreted as a promulgation by the Agency, and EPA should not act until the review is completed. The commenter also stated that EPA must hold off on any ozone action until a court review is completed.

Response #2: EPA disagrees with the commenter's assertion that the Agency has promulgated a repeal of the 2015 ozone NAAQS through public announcement. Until the Agency, through public notice and rulemaking, revises any NAAQS, including the 2015 ozone NAAQS, the NAAQS remain in place and states may seek to incorporate such NAAQS into their SIPs under CAA section 110. In 45 CSR 8, West Virginia updated the effective date of its incorporation by reference of the most recent version of the Code of Federal Regulations (CFR) so that West Virginia could incorporate by reference in its SIP all updated EPA NAAQS. While judicial action is pending relating to implementation of the 2015 ozone NAAQS, nothing prohibits a state like West Virginia from incorporating by reference the 2015 ozone NAAQS into its SIP.

Comment #3: The final comment expressed a desire for EPA to allow the state to incorporate the Federal standards (i.e., NAAQS) on an ongoing basis so that the State does not have to expend taxpayer dollars and resources each time EPA updates 40 CFR parts 50 and 53 with new or revised NAAQS. The commenter also expressed a desire for EPA to, "slow down the regulatory changes and allow states to meet the current standards before imposing new burdens on the states."

Response #3: Nothing in the CAA requires states to incorporate the Federal standards each time EPA updates a NAAQS in 40 CFR parts 50 and 53. West Virginia has decided to incorporate the NAAQS in 45 CSR 8 that are effective as of a certain date. West Virginia's action is responsive to state concerns and limitations and is consistent with the CAA, thus this SIP submittal can be approved in this final action.

IV. Final Action

EPA is approving the amendments to Legislative Rule, 45 CSR 8 – Ambient Air Quality Standards, into the West Virginia SIP pursuant to section 110 of the CAA.

V. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the update to West Virginia's Legislative Rule, 45 CSR 8, as effective on June 1, 2017. EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region III Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update of the SIP compilation.²

VI. Statutory and Executive Order Reviews

A. General Requirements

² 62 FR 27968 (May 22, 1997).

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, to approve West Virginia's SIP revisions to update of the effective date by which the State regulations incorporate by reference the Federal NAAQS, additional monitoring methods, and additional equivalent monitoring methods, which effectively adds the 2015 ozone NAAQS and ambient air monitoring reference and equivalent methods pertaining to PM_{2.5}, PM₁₀, and CO, and changing the reference to the state air agency, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 13, 2018.

Cecil Rodrigues,
Acting Regional Administrator,
Region III.

40 CFR Part 52 is amended as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart XX--West Virginia

2. In § 52.2520, the table entitled “EPA-Approved Regulations in the West Virginia SIP” in paragraph (c) is amended by revising the entries for sections 45-8-1 through 45-8-4 to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(c) ***

EPA-APPROVED REGULATIONS IN THE WEST VIRGINIA SIP

State citation [Chapter 16-20 or 45 CSR]	Title/subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR 52.2565
* * * * *				
[45 CSR] Series 8 Ambient Air Quality Standards				
Section 45-8-1	General	6/1/17	<u>[Insert Federal Register publication date]</u> , <u>[Insert Federal Register Citation]</u>	Filing and effective dates are revised.
Section 45-8-2	Definitions	6/1/17	<u>[Insert Federal Register publication date]</u> , <u>[Insert Federal Register Citation]</u>	Previous Approval 9/22/2014
Section 45-8-3	Adoption of Standards	6/1/17	<u>[Insert Federal Register publication date]</u> , <u>[Insert Federal Register Citation]</u>	Effective date is revised.
Section 45-8-4	Inconsistency Between Rules	6/1/17	<u>[Insert Federal Register publication date]</u> , <u>[Insert Federal Register Citation]</u>	Replaced “West Virginia Department of Environmental Protection” with “Division of Air Quality”
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[FR Doc. 2018-05877 Filed: 3/22/2018 8:45 am; Publication Date: 3/23/2018]